IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

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O R D E R

1. Samalia Vs. State of Rajasthan

(S.B.Criminal Revision Petition No.894/2006)

2. Smt.Seema & Ors. vs. State of Rajasthan

(S.B.Criminal Revision Petition No.477/2006)

3. Hakim & Ors. vs. State of Rajasthan

(S.B.Cr.Revision Petition No.0401/2006)

Date of Order :::: 24 September,2007

HON'BLE MR.JUSTICE G.S.SARRAF

Mr.A.N.Khan for petitioner Samalia
Mr.G.S.Faujdar for petitioners Seema & Ors. & Hakim & Ors.
Mr.Ashwani Kumar Sharma, P.P.
Mr.Praveen Balvada for complainant.

Reportable:

By the Court:-

These three revision petitions have been filed against the order dated 17.4.2006 passed by Additional Ditrict and Sessions Judge (Fast Track) No.2, Bharatpur in Sessions Case No.42/2005 whereby the application of the prosecution filed under Section 319 Cr.P.C. has been allowed and cognizance has been taken against the petitioners and four others of the offences under Sections 147, 148, 447, 341,323,325, 307, 302, 149 IPC.

Facts in brief may be stated thus. One Bacchu Singh lodged a report on 11.7.2005 at the police station Kumher, district Bharatpur against eighteen accused persons about an incident that occured on that day in which one Nawal Singh died and Megh Singh, Madan Singh, Sonveer, Chhitariya and the complainant Bacchu Singh suffered simple and grievous injuries. After investigation a charge-sheet was filed by the police only against four accused persons namely; Mohar Singh, Tej Singh, Shrimati and Ramvati under Sections 147, 148, 447, 341, 323, 325, 307, 302, 149 IPC. It was stated in the charge sheet that one of the accused persons had died during the investigation and the investigation was pending against remaining 13 accused persons under Section 173(8) Cr.P.C. Additional Chief Judicial Magistrate No.4, Bharatpur by order dated 23.11.2005 committed the case to the Sessions Judge, Bharatpur. Subsequently, supplementary charge-sheet was filed against the accused Than Singh and Additional Chief Judicial Magistrate No.4, Bharatpur by order dated 4.2.2006 committed this also to the Sessions Judge, Bharatpur. Sessions Judge, Bharatpur transferred the two cases to Additional Sessions Judge (Fast Track) No.2, Bharatpur (hereinafter referred to as `the trial court') who framed charges against the five accused persons under Sections 148, 447, 341, 323, 325 in the alternative 325/149, 307 in the alternative 307/149, 302 in the

alternative 302/149 IPC.

The trial court recorded the statement of Megh Singh PW.1 on 23.3.2006. On 24.3.2006 the prosecution moved an application under Section 319 Cr.P.C. By the impugned order dated 17.4.2006 the trial court allowed the application of the prosecution moved under Section 319 Cr.P.C. and took cognizance against the petitioners in the three revision petitions and four other persons of the offences under Sections 147,148, 447, 341,323,325, 307, 302, 149 IPC. Aggrieved by this order, the petitioners have filed these revision petitions.

Heard Mr.A.N.Khan and Mr.G.S.Faujdar, learned counsels for the petitioners, Mr.Ashwani Kumar Sharma, learned Public Prosecutor and Mr.Praveen Balvada, learned counsel for the complainant.

Assailing the impugned order Mr.A.N.Khan, counsel for the petitioner Samalia has contended that since the investigation is still pending against the petitioners under Section 173(8) Cr.P.C. therefore, no order could have been passed under Section 319 Cr.P.C. without calling a report from the Investigating Officer.

Mr. G.S.Faujdar, counsel for the petitioners other than Samalia has argued that the trial court could not have proceeded against the petitioners solely on the basis of the statement of Megh Singh PW.1 without corroboration from other witnesses. He has further argued that even Megh Singh PW.1 has failed to describe any

overtact of the petitioners. Therefore, he has said that the impugned order deserves to be set aside. Mr.G.S.Faujdar has placed reliance on Kailash Dwivedi vs. State of M.P. & Anr. **2006(1)WLC(SC)Cr.234.**

Learned Public Prosecutor as also learned counsel for the complainant have supported the impugned order.

I have considered the rival contensions and gone through the material and evidence available on record as well as the relevant provisions of law.

Under Section 319(1) Cr.P.C. where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed. Merely because the investigation against such person is pending under Section 173(8) Cr.P.C. it cannot be said that the court cannot proceed against such person even when such person appears to have committed any offence as the power of the Court to proceed against the guilty person cannot be controlled by the investigating agency and, therefore, no report is required to be called from the Investigation Officer as contended by Mr.A.N.Khan learned counsel for the petitioner Samalia.

The term `evidence' should not be confused with the term `proved' and, therefore, the court may proceed

against a person who appears to have committed any offence even on the basis of single statement recorded by it, if the court is of the opinion that sufficient material has come on record for the purpose of proceeding against him. Thus, I find no merit in the argument of Mr. G.S.Faujdar that the learned trial court could not have proceeded against the petitioners on the basis of single statement.

Sofar as the argument regarding overtact of the petitioners is concerned, Megh Singh PW.1 in his statement, before the court, has said that all the accused persons including the petitioners came in three tractors armed with lathi, farsa and ballam and bricks, stones and country made pistol were also lying in the trolly of the tractor. He has deposed that all the accused persons beat him and other injured persons. Thus it cannot be said that there is no evidence of overt act of the petitioners. The petitioners have also been named in the F.I.R.

In Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors. **1983 (1)SCC 1,** Hon'ble Apex Court has held as under:-

> *"In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other*

> *accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly nd only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law."*

Keeping the above principle in mind and having regard to the evidence available on record, it cannot be said that the trial court has exercised its discretion illegally so as to call for interference in the exercise of revisional jurisdiction of this Court.

In view of the above discussion all the three revision petitions fail and, therefore, stand dismissed accordingly.

Registry is directed to return the record to the trial court immediately.

(G.S.Sarraf),J.

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